



California Fair Political Practices Commission

December 18, 1987

Barry Brandt
City Attorney of La Quinta
Maroney, Brandt & Holdaway
592 North Euclid Avenue
P.O. Box 1350
Upland, CA 91785

Re: Your Request for Advice
Our File No. A-87-298

Dear Mr. Brandt:

You have requested advice on behalf of La Quinta City Councilmember Dale Bohnenberger, concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/}.

QUESTION

Mr. Bohnenberger simultaneously holds the positions of La Quinta City Councilmember and deputy chief engineer for the Coachella Valley Water District. What restrictions apply to his actions as a councilmember because of his employment with the water district?

CONCLUSION

Under the Act, Mr. Bohnenberger's position as deputy chief engineer for the Coachella Valley Water District does not restrict his participation in decisions of the La Quinta City Council. The Act prohibits public officials from participating in governmental decisions which affect their private financial interests. You should seek advice from the Attorney General's office if you are concerned about the effect of Section 1090 or other laws on Mr. Bohnenberger's participation in decisions of the city council.

ANALYSIS

Mr. Bohnenberger is a public official in the City of La Quinta and in the Coachella Valley Water District. (Section 82048.) As a public official in two different agencies, Mr. Bohnenberger must file a separate Statement of Economic

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Interests for each position. (Sections 87200-87210 and 87300-87313.) He also is subject to the Act's disqualification requirements.

Section 87100 prohibits a public official from making, participating in, or using his official position to influence any governmental decision in which he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family or on:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.
- (c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

Presumably, Mr. Bohnenberger receives a salary for his work as chief deputy engineer for the Coachella Valley Water District. This does not present a problem under the Act. For purposes of the Act, salary and reimbursement for expenses or per diem from a government agency are not considered "income." (Section 82030(b)(2).) Accordingly,

Barry Brandt
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his government salary is not a disqualifying financial interest for purposes of Section 87103(c).

Section 87103(d) requires Mr. Bohnenberger to disqualify himself from participating in decisions which would foreseeably and materially affect any business entity in which he is an officer or employee. Again, this provision does not apply to Mr. Bohnenberger's situation. A government agency is not a "business entity" for purposes of the Act. (Section 82005.) Thus, his employment with the water district is not a disqualifying financial interest for purposes of Section 87103(d).

The Act typically prohibits public officials from participating in governmental decisions which could harm or benefit their private financial interests. Thus, public employment ordinarily does not create the basis for conflicts of interest under the Act.

In your letter, you were specifically concerned about Mr. Bohnenberger's participation in various development approval decisions before the La Quinta City Council, since these decisions have the effect of creating revenue for the water district. You did not mention whether the city council also must vote on contracts with the water district. Government Code Section 1090 restricts the conduct of public officials in making government contracts. Section 1090 is not part of the Act, thus we cannot advise you about your duties under that law. Any questions about Section 1090 should be addressed to the Attorney General.

I have also enclosed a copy of an article published in our Bulletin regarding Attorney General opinions on the subject of incompatibility of public offices. You may wish to review these or seek advice from the Attorney General's office on this subject, as well.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DONALD E. MARONEY
BARRY BRANDT
RICHARD E. HOLDAWAY
ROBERT D. HERRICK

LAW OFFICES
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[714] 985-2680

November 18, 1987

Ms. Kathy Donovan
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Conflict of Interest Opinion Relative to
City Council Member-Dale Bohnenberger
City of La Quinta

Dear Ms. Donovan:

City Council Member, Dale Bohnenberger, of the City of La Quinta has asked me as City Attorney, to request a written opinion as to any potential conflict of interest under the Fair Political Practices Act relative to the following factual situation. Council Member Bohnenberger is both a City Council Member and is ex officio, a member of the La Quinta Redevelopment Agency. He is employed by the Coachella Valley Water District (CVWD) as Deputy Chief Engineer. Various developmental approval decisions that Mr. Bohnenberger makes or participates in making on behalf of the City have the effect of creating revenue for the Water District (e.g., sewer and water hookups).

In November, 1984, this same question was posed on behalf of Mr. Bohnenberger by my predecessor, Jim Longtin. At the time, he received an oral opinion from you indicating there was no conflict for two reasons: (1) the salary of a local government employee is excluded from the definition of income for determining an official's financial interest and (2) a local government entity is not a business entity for such purposes because it is not operated for a profit. Mr. Bohnenberger, however, has now asked for a formal written opinion which prompts this request.

Kathy Donovan


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November 18, 1987

If there is any further information you need, please advise me, and I will promptly respond. Thank you for your attention to this matter.

Yours very truly,

MARONEY, BRANDT & HOLDAWAY
A Professional Law Corporation


BY: BARRY BRANDT, CITY ATTORNEY
CITY OF LA QUINTA

BB:kpc

cc: Ron Kiedrowski
Dale Bohnenberger

87-298

LAW OFFICES

Maroney, Brandt & Holdaway

A PROFESSIONAL LAW CORPORATION

592 NORTH EUCLID AVENUE

P. O. BOX 1350

UPLAND, CALIFORNIA 91785

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November 18, 1987

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P. O. Box 807
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A Professional Law Corporation


BY: BARRY BRANDT, CITY ATTORNEY
CITY OF LA QUINTA

BB:kpc

cc: Ron Kiedrowski
Dale Bohnenberger



California Fair Political Practices Commission

November 25, 1987

Barry Brandt
Maroney, Brandt & Holdaway
P.O. Box 1350
Upland, CA 91785

Re: 87-298

Dear Mr. Brandt:

Your letter requesting advice under the Political Reform Act was received on November 24, 1987, by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel *by Ted*

DMG:plh
cc: Dale Bohnenberger